IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTER PATENT APPEAL NO. 97 OF 2000

Mrs.Charushila Vithal Vanjari. ... Appellant.

V/s.

1. Usha Arun Nikam,

2. Deccan Education Society,

3. Shri Vijay R. Urade,

4. Shri N.B.Pandule,

5. Education Officer,
Secondary Section, Pune,

6. Education Officer,
Secondary Section, Satara,

7. State of Maharashtra. ... Respondents.

Uday Warunjikar for the appellant.

Dilip Bodke i/b. S.Langote for respondent No.1.

S.B.Deshmukh i/b. A.V.Anturkar
for respondent No.4.

S.K.Chinchlikar, A.G.P. for respondent Nos.5 to 7.

CORAM : V.C.DAGA AND R.S.MOHITE, JJ.

DATED : 22nd September 2004.

P.C. :

. This appeal is directed against the order of the learned single Judge dated 23rd February, 2000 passed in Writ Petition No.6819 of 1999, whereby learned single Judge was pleased to hold that in the event of supersession, the School

Tribunal has no jurisdiction to deal with the questions arising therefrom. The writ petition came to be allowed. The order of the School Tribunal dated 29th July, 1999 impugned therein came to be set aside.

2. Learned single Judge while allowing writ petition relied upon the judgment of the learned single Judge of this Court in the case of **B.K.L.P.S.Sanstha v. Vilasrao**, 1999 (2) Mh.L.J. 779; wherein it was ruled that the School Tribunal has no jurisdiction to go into the question of inter-se seniority between the teachers; since the jurisdiction is, specifically, conferred upon the Education Officer under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1978 and Rules of 1981 framed thereunder.

3. The learned counsel for the appellant submits that the impugned judgment of learned single Judge dated 23rd February, 2000 is liable to be quashed and set aside in view of the fact that the impugned judgment is based on the earlier judgment of learned single Judge in **B.K.L.P.S.Sanstha v. Vilasrao** (supra) which is no longer a good law in

view of the subsequent judgment of the Division Bench of this Court in the case of **Umesh Balkrishna v. State of Maharashtra**, 2000 (4) Mh.L.J. 564 to which one of us (Daga, J.) is party.

4. The Division Bench in the said judgment delivered in the case of **Umesh Balkrishna** (supra) has held that finalisation of seniority list under rule 12 of the Rules of 1981 is not final and conclusive. While deciding the issue of supersession in appeal under section 9(1)(b) of the Act, the School Tribunal can look into the dispute relating to seniority list as an incidental question. The Division Bench while taking this view has relied upon two unreported earlier judgments of the Division Bench of this Court referred to therein. In this view of the matter, learned counsel for the appellant submits that the impugned order is liable to be quashed and set aside.

5. Per contra, learned counsel for the respondent No.1 submits that considering the law laid down by the Division Bench in the above judgment, the view taken by learned single Judge in the impugned order cannot be sustained. He, however, submits that since there is no consideration of the issues on merits the matter may

be remitted back to the learned single Judge for consideration afresh.

6. The above submission made is reasonable. We also went through the impugned order. We could not notice any decision on the merits of the matter. The passing observations made in the impugned order tend to give little colour of appreciation of issues on merits, but those observations are really incidental. Nothing has been decided on merits of the issues. In this view of the matter, it would in the interest of justice to set aside the impugned order and remit the matter back to learned single Judge for decision afresh in accordance with law.

7. In the result, impugned order dated 23rd February, 2000 is set aside. The matter is remitted back to learned single Judge for decision of the writ petition on merits. We make it clear that we have not considered any issue on merits of the matter. It would be open for learned single Judge to deal with the merits of the matter. Appellant would be at liberty to persuade learned single Judge to hear this matter on priority basis.

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